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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Paper No. 29

Application Number: 09/189,559

Filing Date: November 11, 1998

Appellant(s): MCMILLAN ET AL.

John G. Posa
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 23 October 2003

(1) *Real Party in Interest*

A statement identifying the real party in interest is contained in the brief.

(2) *Related Appeals and Interferences*

A statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief.

(3) *Status of Claims*

The statement of the status of the claims contained in the brief is correct.

(4) *Status of Amendments After Final*

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) *Summary of Invention*

The summary of invention contained in the brief is correct.

(6) *Issues*

The appellant's statement of the issues in the brief is correct.

(7) *Grouping of Claims*

Appellant's brief includes a statement that claims 1-65 do not stand or fall together and provides reasons as set forth in 37 CFR 1.192(c)(7) and (c)(8).

(8) *ClaimsAppealed*

The copy of the appealed claims contained in the Appendix to the brief is correct.

(9) Prior Art of Record

5,586,304	Stupek,Jr et al	12-1996
6,018,747	Burns et al.,	01-2000
5,634,114	Shipley	05-1997
5,842,024	Choye et al.,	11-1998
6,192,375	Gross	02-2001

(10) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

1. Claims 1, 5-8, 14-18, 22-25, 31-43,45-52, 58-65, are rejected under 35 U.S.C. 103(a) as being unpatentable over Stupek, Jr. et al., [hereafter Stupek], US Patent No. 5586304 in view of Burns et al., [hereafter Burns], US Patent No. 6018747.

2. As to Claims 1, 16,18, and 33, Stupek details a system which including 'receiving change information made to a files and other shared resources during installation of at least one application' [col 1, line 55-67, col 2, line 1, line 12-17, fig 5B], receiving change information corresponds to upgrading a resource of a computer from an existing version of to a later version of the resource as detailed in col 1, line 55-58, further change information corresponds to DESCRIPT.DB of Stupek, description database stores for example package number, record count version number etc., as detailed in fig. 5B; 'processing the change information to determine which files and shared resources conflict with one another to obtain conflict information' [col 7, line 1-24], 'storing the conflict information in a database of interrelated tables' [col 7, line 32-37], examiner interpreting database to be equivalent to Stupek's fig 5C, element 29, also, it is noted that Stupek specifically teaches various upgrades that are found in a package that including package number, record count, version number, date of the upgrade as detailed in col 6, line 52-56, also, Stupek specifically teaches comparison service, storing the comparison results , see fig 7B, elements 244-250. It is noted, however, Stupek does not specifically detail the claimed limitation 'actual changes' although Stupek teaches for example comparison service in relation with the version upgrade as

detailed in fig 5C, col 7, line 15-24. On the other hand, Burns teaches the claimed feature 'actual changes' [col 3, line 42-46, 61-63, col 4, line 48-50, fig 3], examiner interpreting actual changes corresponds to Burns's delta file because, delta files represents changes between versions as detailed in col 3, line 61-63, fig 3, also because, Burns specifically teaches for example detecting conflict between versions, and generating a delta file that represents actual change(s).

Therefore, it would have been obvious one of the ordinary skill in the art at the Time of the invention to incorporate the teachings of Burns into the automatic Computer-upgrading system of Stupek because they are both directed to updating versions of computer software, more specifically comparing versions [see Stupek fig 5A, fig 9, element 59, col 1, line 18-20, col 2, line 24-31; Burns: Abstract, fig 3] and are both from the same field of endeavor. One of ordinary skill in the art at the time of the invention would have been motivated to combine the references because that would have allowed users of Stupek's computer upgrading system to modify Stupek's upgrade database fig 9, to incorporate delta file which determine and control actual conflict or change(s) or differences between two versions as suggested by Burns [fig 3], bringing the advantage of first detecting conflict between version(s) [see Burns col 5, line 14-25] second generating a delta file that exclusively represents difference between version(s) [see fig 3, col 4, line 48-50], thus improving overall software updating of version(s) reliability and versatility of the system.

3. As to Claims 5 and 22, Stupek details a system which including 'driver conflict information' [see fig 4, element 32, col 4, line 21-30]

4. As to Claims 6 and 23, Stupek details a system which including 'data source conflict' [see col 5, line 54-67], specifically, job status is an indication whether or not error free.

5. As to Claims 7 and 24, Stupek details a system, which includes 'service conflict' [see figs 5A-5D, fig 6, element 47a - 47c, col 7, line 49-64].

6. As to Claims 8 and 25, Stupek details a system which including 'device conflict' [see fig. 1, element 10, col 3, line 49-63], more specifically, Stupek teaches automatically analyzing and executing the upgrades and also details upgrade comparisons see col 4, line 5-12.

7. As to Claims 14, 17 and 31, Stupek details a system which including 'resolving includes the step of generating an installer from the information stored in the database' [col 4, line 5-13, line 38-43].

8. As to Claims 15 and 32, Stupek details a system which including 'at least one of the tables has a conflict field for storing' [fig 4, element 34, details status field, fig 8, element 324 details storing the status results, col. 8, line 55-58].

9. As to Claims 34-38, 47-52, Burns teaches a system which including 'conflict severity values comprises an informational value and an error value' [col 4, line 60-67, col 5, line 1-5], information value corresponds to add commands to the ordered pair, error values corresponds to the encodes the length of the string that determines the conflict detection, more specifically the delta file information as detailed in col 4, line 60-67, col 5, line 1-5.

10. As to Claims 39-43, both Stupek, Burns teaches versions, more specifically Stupek teaches automatic installation of package in which database contains the package script, also database contains the information regarding package and other upgrade objects or packages such as detailed in fig 5A, version corresponds to fig 5A, element 25c, date corresponds to element 25d. Burns also teaches comparing various version(s) of files such as old version and new version [see col 3, line 37-40], further Burns specifically teaches comparing two versions and extracting delta file that represents specific conflict detection, in other words delta files to represent the changes between versions, therefore, Burns teaches two files do not match.

11. As to Claims 45-46, Stupek teaches a system which including 'ODBC drivers have the same driver name, attribute exists for one of two ODBC drivers' [see col 9, line 21-33], Stupek specifically teaches Novell program packages that corresponding to each of the NetWare drivers installed to the servers as detailed in col 9, line 24-254, as best understood by the examiner, ODBC or open database connectivity drivers is a

program file used to connect to a particular database, further each database program requires a different driver, it is also noted that Stupek specifically teaches a server manager that contains server database, element 13, also containing installation instructions as detailed in fig 2, element 20 that related to server manager.

12. As to Claims 58-65, Burns teaches a system which including 'determining the change information' [col 2, line 36-39], interrelated tables corresponds to reference file and version file information as detailed in fig 3.

13. Claims 2-4, 19-21,44,55 are rejected under 35 U.S.C. 103(a) as being unpatentable over Stupek, Jr. et al., [hereafter Stupek], US Patent No. 5586304, Burns et al., [hereafter Burns], US Patent No. 6018747 as applied to claims 1, 18,33 above, and further in view of Shipley, US Patent No. 5634114.

14. As to Claims 2 and 19, Stupek and Burns do not specifically teaches 'DLL file conflict', examiner notes that DLL or dynamic link library file(s) are well known in the art for example one of the feature of Microsoft Windows family of operating systems and OS/2 that allows executable routines stored separately as files with DLL extensions and to be loaded only when needed by a program. Shipley details a system which including 'DLL file conflict' [see col 3, line 32-50], examiner interpreting DLL file conflict is to be equivalent to comparing DLL version number in a table and if version matched, "preferred version OK" flag is a kind of check as detailed in col 3, line 42-45.

It would have been obvious one of the ordinary skill in the art at the time of the applicant's invention to incorporate the teachings of Shipley into the automatic computer upgrading system of Stupek, Burns's updating of computer files based on versions because they are directed to updating versions of computer software, more specifically comparing versions [see Stupek fig 5A, fig 9, element 59, col 1, line 18-20, col 2, line 24-31; Burns: Abstract, fig 3], Shipley's comparing version(s) [see Abstract], and are from the same field of endeavor. One of ordinary skill in the art at the time of the invention would have been motivated to have combined the references because that would have allowed users of Stupek, Burns computer software updating system(s) to control which relative comparing the versions of DLL and detecting DLL conflict or errors or flags allows to prevent run-time errors within the application program due to version changes, suggested by Shipley [see col 3, line 52-62], at the same time generating delta file represents specifically only the differences between versions as suggested by Burns [see col 3, line 62-63, fig 3]maintaining the upgrade information indicating the changes from the previous versions of Stupek [see col 2, line 28-31], improving the reliability and versatility of the system.

15. As to Claims 3-4 and 20-21,44, 55 Stupek details for example resource upgrades, including packages, and upgrade objects as detailed in fig 1, also details results directory and status data as detailed in fig 2, elements 73 and 75. Shipley details setting version flag to preferred version as detailed in fig 2. In general, Registry is commonly well known in the art as a central hierarchical database in operating

system like Windows 95 used to store information necessary to configure the system for one or more users, applications and hardware devices. Again Shortcuts or commands are well known in the art for example "print command is generally known as Ctrl+P; Copy is Ctrl+C; Paste is Ctrl+V; Cut is Ctrl+X. Therefore, Registry and Registry errors, Shortcut or commands are inherent aspects of both Stupek and Shipley's invention.

16. Claims 56-57 are rejected under 35 U.S.C. 103(a) as being unpatentable over Stupek, Jr. et al., [hereafter Stupek], US Patent No. 5586304, Burns et al., [hereafter Burns], US Patent No. 6018747 as applied to claims 1, 18 above, and further in view of Gross, US Patent No. 6192375

17. As to Claims 56-57 Both Stupek, Burns et al do not specifically teach 'GUIDs, although Stupek teaches automatic computer upgrading' [see Abstract], while Burns et al. directed to generating and reconstructing delta files to represent the changes between various versions as detailed in Abstract. On the other hand Gross teaches the limitation GUID [see col 4, line 31-37], further examiner notes that GUID or globally unique identifier is unique because it contains a time stamp and a code, also these identifiers are generated by a utility programs.

It would have been obvious to one of the ordinary skill in the art at the time of the invention to combine the references of Stupek, Burns with Gross because that would have allowed uses of Stupek, Burns to incorporate the GUID that identifies an interface

to an object(s) across all computers that including networking system bringing the advantages of initializing various program files that are associated with executable files from various locations.

18. Claims 9-13, 26- 30,53-54, are rejected under 35 U.S.C. 103(a) as being unpatentable over Stupek, Jr. et al., [hereafter Stupek], US Patent No. 5586304, Burns et al., [hereafter Burns], US Patent No. 6018747 as applied to claims 1, 18 above, and further in view of Choye et al., [hereafter Choye], US Patent No. 5842024.

19. As to Claims 9-13, 53-54, Stupek and Burns do not specifically detail 'Microsoft Windows Installer component conflict, autoexec.bat conflict, config.sys conflict, INI changes conflict, path conflict', although Stupek does detail for example upgrade installer as detailed in fig 1, element 17, col 4, line 38-43, a comparison service elements 47a-47c as detailed in fig 6, col 8, line 27-30. Choye teaches 'Microsoft Windows Installer component conflict' [col 4, line 55-60, col 5, line 4-19, line 20-28]'autoexec.bat conflict' [col 5, line 4-19], 'config.sys conflict' [col 5, line 4-19], 'INI changes conflict' [col 5, line 4-19], examiner notes that In DOS and Windows operating system, the file extension that identifies an initialization file contains user preferences and startup information about the application program, therefore, it is inherent aspect of Choye's teachings because, Choye teaches for example autoexec.bat, config.sys comparing with the original contents as detailed in col 3, line 25-30, col 5, line 4-28; 'path conflict' [col 3, line 25-30, col 4, line 14-20, col 5, line 20-28].

It would have been obvious one of the ordinary skill in the art at the time of the applicant's invention to combine the concepts taught by Choye with the system of Stupek and Burns because a modular or application approach of installing Microsoft Windows Installer component, autoexec.bat, config.sys, INI, path allows to compare any changes and implementing changes through SCRIPT.EXE of Choye in the same block of Stupek allowing upgrade information in particular version(s) and importance of the change(s) as suggested by Stupek [see col 2, line 24-31] and updating version files by way of creating delta files to represent changes between versions [see Burns, fig 3, col 3, line 61-63], thus improving the reliability and versatility of the system.

20. The elements of Claims 26-30 are rejected in the analysis above and these Claims are rejected on that basis.

(11) Response to Argument

a) At page 4, line 8-11, Claims1, applicant argues 'this upgrade information is merely descriptive and is clearly not equivalent to

As to the above argument [a], examiner disagree with the applicant because firstly, Stupek, et al., is directed to automatic computer upgrading, more specifically, upgrading a resource of a computer from existing version of the resource to a current version or later version of the resource [see Abstract, col 1, line 55-58], secondly, Stupek specifically suggests for example change information in the description

database "DESCRIP.DB" that maintains actual change information, in the office action, examiner specifically noted that change information corresponds to Stupek's information in the "DESCRIP.DB", thirdly, although Stupek suggests comparison services that related to current software number, record count, version number, date of the upgrade [see col 6, line 52-56], Stupek does not suggest 'actual changes'. On the other hand, Burns teaches 'actual changes [see Burns: col 3, line 42-46,61-63, col 4, line 48-50, fig 3] that corresponds to Burns's "delta file" because delta file represents actual conflict information or changes between versions as detailed in col 3, line 61-63, fig 3, further Burns also suggests detecting conflict between version(s) and generating actual delta file that represents actual change(s).

b) At page 4, line 24-29, applicant argues 'obviousness may not be established using hindsight.....

In response to applicant's argument [b] that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

c) At page 5, line 6-8, Claim 1, applicant argues 'the examiner has not met these burdens.....

In response to applicant's argument [c] that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, Stupek et al., firstly is directed to automatic computer upgrading, more specifically upgrading a resource of a computer from an existing version of the resource to a current version of the resource [see Abstract, fig 1]. Secondly, Stupek teaches for example creating or maintains a database that consists of package database, description database, how_to database, specifically package database keeps version, date package name and other parameters [see fig 5A], while description database specifically provides actual description of change between present version and previous version [see fig 5B, 27e].

Burns et al., is directed to firstly, generating and reconstructing in-place delta files, more specifically replicating, rebuilding in-place reconstructible software updates to a file from source computer to a target computer [see Abstract], secondly, Burns teaches delta file(s) specifically represent the changes between versions, thirdly, Burns

teaches conflict detection, further Burns specifically detailed a *delta file represents second version of the file as a set of changes to the first version* [see col 8, line 37-38] with respect to updates.

Therefore, it would have been obvious one of the ordinary skill in the art at the Time of the invention to incorporate the teachings of Burns into the automatic computer upgrading system of Stupek because they are both directed to updating versions of computer software, more specifically comparing versions [see Stupek fig 5A, fig 9, element 59, col 1, line 18-20, col 2, line 24-31; Burns: Abstract, fig 3] and are both from the same field of endeavor. One of ordinary skill in the art at the time of the invention would have been motivated to combine the references because that would have allowed users of Stupek's computer upgrading system to modify Stupek's upgrade database fig 9, to Incorporate delta file which determine and control actual conflict or change(s) or differences between two versions as suggested by Burns [fig 3], bringing the advantage of first detecting conflict between version(s) [see Burns col 5, line 14-25] second generating a delta file that exclusively represents difference between version(s) [see fig 3, col 4, line 48-50], thus improving overall software updating of version(s) reliability and versatility of the system.

d) At page 5, line 15-19, Claim 1, applicant argues "304 reference simply does not teach or suggest a method of managing software conflicts in a computer.....

As to the above argument [d], examiner disagree with the applicant because firstly Stupek et al., specifically directed to upgrading a resource of a computer from existing version of the resource to a current version of the resource [see Abstract], secondly, Stupek specifically maintains databases for example package database, description database that have all the required information related to version, data, description and importance of the package and like as detailed in fig 5A-5B, thirdly, as noted in the office action, As best understood by the examiner upgrade information that include information concerning reasons for the later or current version and indication of the type of change from a prior version or old version to the later version this corresponds to specific information to aid the user to indicate change from the prior version to the later version and information identifying other resources that must be upgraded before the resource may be upgraded as suggested at col 2, line 24-31.

It is however noted that Stupek does not specifically disclosed *actual changes*, although Stupek teaches for example comparison service in relation with the version upgrade as detailed in fig 5C, col 7, line 15-24. On the other hand, Burns disclosed *actual changes as detailed in col 3, line 42-46, line 61-63, col 4, line 48-50, fig 3*, examiner interpreting actual changes corresponds to Burns's delta file because delta file represents changes between versions as detailed in col 3, line 61-63, fig 3.

e) At page 7, Group II-Claims 2-4,19-21,44,55, applicant argues 'Shipley does not receive change information regarding actual changes.....

As to the above argument [e], examiner disagree with the applicant because firstly Shipley is directed to dynamic link library version negotiation, more specifically teaches version identification which is attributed both to a particular DLL file and to a particular executable program, secondly, Shipley specifically suggests maintaining version numbers in a table for application program to compare and find compatible version [see col 3, line 45-50], examiner notes that DLL or dynamic link library file(s) common knowledge in the art for example one of the feature of Microsoft Windows family of operating system and OS/2 that allows executable routine stored separately as files with DLL extensions and be loaded only when needed by a program, also examiner noted that applicant admits that Shipley does address DLL versions [page 7, line 1].

As best understood by the examiner dynamic link library files are special files that are used in operating systems such as DOS, Windows, further dynamic link library files can have multiple versions of the same file installed by different programs that can cause conflicts, therefore, DLL utility program s help resolve and replacing conflicting versions of .DLL files is a common knowledge in the art, also see Shipley fig 3, element 22 for matching version number. Also, it is noted that Shipley disclosed DLL file conflict as detailed in col 3, line 32-50, examiner interpreting DLL file conflict corresponds to comparing DLL version number in the table and if version matched, set the version flag to matching version as detailed fig 3.

f) At page 7, line 23-24, Group III-Claims, applicant argues 'the disclosure of Choye et al adds nothing in support of the examiners' rejection.....

As to the above argument [f], as best understood by the examiner Choye et al., is directed to software installation, more specifically installing various software programs with proper configuration of the operating system and like as detailed in col 2, line 62-67, col 3, line 1-4,. In the office action, examiner noted that both Stupek and Burns do not detail the limitation 'Microsoft Windows Installer component conflict, autoexec.bat conflict, config.sys conflict,INI changes conflict, path conflict', although Stupek does detail for example upgrade installer as detailed in fig 1, element 17, col 4, line 38-43, a comparison service elements 47a-47c as detailed in fig 6, col 8, line 27-30. and also examiner notes that these files are integral part of any operating system and common knowledge in the art. On the other hand it is noted that Choye teaches 'Microsoft Windows Installer component conflict' [col 4, line 55-60, col 5, line 4-19, line 20-28]'autoexec.bat conflict' [col 5, line 4-19], 'config.sys conflict' [col 5, line 4-19], 'INI changes conflict' [col 5, line 4-19], examiner notes that In DOS and Windows operating system, the file extension that identifies an initialization file contains user preferences and startup information about the application program, and therefore these files are integral part of windows operating system installation of Choye for example autoexec.bat, config.sys [see col 4, line 14-19].

g) At page 8, line 12-13, Group IV-Claims, applicant argues 'although the Gross reference metions GUID, it is not in the context of

As to the above argument [g], as best understood by the examiner both Stupek, Burns do not specifically teach 'GUID', although Stupek disclosed automatic computer upgrading [see Abstract], Burns to teach reconstructing delta files to represent the changes between versions [see Burns: Abstract]. Gross disclosed GUID are generated by operating system to associate a file to the required data [see Gross: col 4, line 25-33].

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,


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sc
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